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SUMMARY RECORD OF THE 53rd MEETING

Chairman: Mr. YAMADA (Japan)

(Chairman of the Working Group of the Whole on the Elaboration of a Framework Convention on the Law of the Non-Navigational Uses of International Watercourses)

CONTENTS

AGENDA ITEM 144: CONVENTION ON THE LAW OF THE NON-NAVIGATIONAL USES OF INTERNATIONAL WATERCOURSES (continued)

Elaboration of a framework convention on the law of the non-navigational uses of international watercourses on the basis of the draft articles adopted by the International Law Commission in the light of the written comments and observations of States and views expressed in the debate of the forty-ninth session of the General Assembly (continued)
(A/C.6/51/NUW/WG/L.1/Rev.1 and Add.1)

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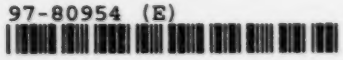

Mr. Yamada (Chairman of the Working Group of the Whole on the Elaboration of a Framework Convention on the Law of the Non-Navigational Uses of International Watercourses) took the Chair.

The meeting was called to order at 10.20 a.m.

AGENDA ITEM 144: CONVENTION ON THE LAW OF THE NON-NAVIGATIONAL USES OF INTERNATIONAL WATERCOURSES (continued)

Elaboration of a framework convention on the law of the non-navigational uses of international watercourses on the basis of the draft articles adopted by the International Law Commission in the light of the written comments and observations of States and views expressed in the debate of the forty-ninth session of the General Assembly (continued) (A/C.6/51/NUW/WG/L.1/Rev.1 and Add.1)

1. The CHAIRMAN invited the Chairman of the Drafting Committee to introduce that Committee's report contained in document A/C.6/51/NUW/WG/L.1/Rev.1/Add.1.

Report of the Drafting Committee

2. Mr. LAMMERS (Chairman of the Drafting Committee), introducing the second report of the Drafting Committee contained in document A/C.6/51/NUW/WG/L.1/Rev.1/Add.1, said that at the second session of the Working Group the Drafting Committee had held six meetings from 24 to 27 March 1997.

3. Before introducing the report, he expressed his sincere thanks to all the delegations for their cooperation and support. He also thanked the Expert Consultant, Mr. Rosenstock, for his contribution in advising the Committee whenever necessary. He also expressed his appreciation to the coordinators for their efforts to bridge gaps and bring together diverse views.

4. The pending issues before the Drafting Committee had been article 3, paragraph 3, articles 7 and 33, the preamble and the final clauses. The Drafting Committee, despite the best effort of everyone, had not been able to recommend a generally agreed text on all the pending issues. During the current week, work would continue on article 7 concerning the obligation not to cause significant harm and article 33 concerning dispute settlement.

5. The set of draft articles prepared by the International Law Commission (ILC) had not contained a preamble. General Assembly resolution 49/52 had therefore requested the Drafting Committee to prepare the text of a draft preamble and to submit it to the Working Group. That text was contained in document A/C.6/51/NUW/WG/L.1/Rev.1/Add.1 and consisted of 13 paragraphs.

6. The first sentence of the preamble made reference to the "Parties" to the Convention and not to "States Parties". The generic term "Parties" had been used because it had been envisaged that not only States but also regional economic integration organizations might become Parties to the Convention.

7. The first preambular paragraph was meant to provide a very general introduction to the text of the Convention. It should be noted that there were two expressions between square brackets. The placing of the expression "the non-navigational uses of" between square brackets reflected the fact that, while some delegations had believed that a general introductory preambular paragraph should make reference to the importance of international watercourses in general, irrespective of the specific subject matter of the Convention, others had considered that the Convention's precise scope should be made clear already in the first preambular paragraph. The expression "and their ecosystems" had been placed between square brackets pending the outcome of the discussions on similar expressions found in articles 5 and 8, which were also between square brackets for the time being.

8. The second preambular paragraph was also of a general nature and simply restated the provision of Article 13, paragraph 1 (a), of the Charter of the United Nations relating to the progressive development of international law and its codification.

9. The third preambular paragraph linked the first two together in that it addressed the effects of successful codification and development of rules of international law not from a general standpoint, but in connection with the subject matter of the Convention, namely, the non-navigational uses of international watercourses. The paragraph highlighted the contribution of such exercise in the promotion and implementation of the purposes and principles set forth in Articles 1 and 2 of the Charter of the United Nations.

10. The fourth preambular paragraph drew attention to the problems affecting the viability of many international watercourses. It also listed two important sources of such problems: increasing demands and pollution. However, it was clear from the words "among other things", that the short list was only indicative.

11. The fifth preambular paragraph dealt with the intended concrete effects of the Convention: they were to "ensure the utilization, development, conservation, management and protection of international watercourses and the promotion of the optimal [and sustainable] utilization thereof for present and future generations". It should be noted, in that connection, that the words "and sustainable" were between square brackets, pending the conclusion of the discussions on article 5 where that expression also appeared between square brackets. It should also be noted that the term "framework" had been inserted before the word "Convention". It would be recalled that, in paragraphs 2 and 4 of the ILC commentary to article 3, as well as in paragraph 3 of General Assembly resolution 49/52, references had been made to "framework agreement" and "framework convention". The Drafting Committee had found it appropriate to simply recall those references without taking a position on their meaning.

12. The sixth preambular paragraph affirmed the importance of two general principles which were particularly relevant with regard to the non-navigational uses of international watercourses: international cooperation and good-neighbourliness. The seventh preambular paragraph was self-explanatory, since it called attention to the special situation and needs of developing countries.

13. The eighth preambular paragraph was placed between square brackets. Indeed, delegations had expressed different views on that matter. Some had argued that it was important to recall that the sovereignty of States extended over the parts of international watercourses situated in their territory - to the extent that the exercise of such sovereignty was in conformity with international law - as well as to stress the ensuing direct responsibility of such States to take appropriate action in that area. Other delegations had felt that such emphasis on the sovereignty of States could be misleading, as the purpose of the Convention was precisely to impose certain limitations on the freedom of States regarding the non-navigational uses of international watercourses.

14. The ninth preambular paragraph recalled the provisions and principles of the Rio Declaration on Environment and Development and Agenda 21. It had been considered relevant to include such reference since the Convention addressed, among other things, the question of the protection and preservation of international watercourses.

15. The tenth preambular paragraph recognized the fact that a number of bilateral and multilateral agreements existed already regarding the non-navigational uses of international watercourses. The eleventh preambular paragraph recalled the work done in that field in other forums. The twelfth preambular paragraph recognized the fact that the draft convention under elaboration was based on the draft articles prepared by the International Law Commission. The Assembly would, by means of that paragraph, express its appreciation to the Commission for its contribution.

16. Finally, the thirteenth preambular paragraph made reference to General Assembly resolution 49/52, whereby the Working Group had been established. That paragraph was followed by the standard phrase which concluded a preamble, namely, "Have agreed as follows".

17. As for article 3, paragraph 3, the Drafting Committee recommended no changes in the text as proposed by the International Law Commission. That meant that the square brackets around the words "apply and adjust" in paragraph 3 of the text contained on page 3 of document A/C.6/51/NUW/WG/L.1/Rev.1 should be removed. As a consequence, the bracketed words "adjustment or application" in paragraph 5 should read "adjustment and application" without any square brackets.

18. The Drafting Committee, however, wished to place on record a very clear understanding regarding that paragraph. That understanding read:

> "It is understood that the present Convention will serve as a guideline for future watercourse agreements and that, once such agreements are concluded, it will not alter the rights and obligations provided therein, unless such agreements provide otherwise."

19. The Committee had been unable to agree on whether that understanding, which had been recorded verbatim in the summary records, would be sufficient, or whether it should be reflected elsewhere. Consultations were continuing on the subject.

20. Article 7 was an important article. Both the Working Group of the Whole and the Drafting Committee had devoted days to discussing it and consulting on it. At the current session, Canada had been appointed as the coordinator on that article, and had continued its consultations with the delegations during the Drafting Committee's second session. Canada had reported, however, that the consultations were not completed and should continue.

21. As for article 33, the Drafting Committee was unfortunately unable to submit a text to the Working Group of the Whole. It would be recalled that the debate on that article in the Working Group of the Whole had shown that the delegations had very diverse views. The same views had been expressed in the Drafting Committee. Some delegations had favoured a simple provision providing only that disputes arising from the implementation of the Convention should be settled peacefully. In their view, States should be left entirely free to choose their own method of dispute settlement. Any obligatory compulsory binding procedure was not only devoid of any practical utility for the effectiveness of the Convention, but also was counter-productive by discouraging a number of States from joining the Convention. On the other hand, some other delegations had preferred a clearly spelled out compulsory and binding dispute settlement procedure. In the view of those delegations, the Convention would not be effective unless it was clear that, if parties did not comply with its terms, there would be a compulsory and binding dispute settlement procedure. Those delegations also felt that a number of issues in the Convention were stated in general terms and that, if parties could not agree on their exact meanings, there must be certainty that, at the last stage, the issue would be resolved through a compulsory and binding procedure. There had been yet another group of delegations which felt that many States would not agree to a compulsory and binding dispute settlement procedure. In their view, in order not to keep the Convention hostage to compulsory and binding dispute settlement procedures, it might be more appropriate to design a dispute settlement procedure with flexibility, allowing the parties to choose their own mode of settlement with an addition of compulsory non-binding procedure such as compulsory fact-finding or conciliation. Such a procedure could also provide for an opt-in procedure. Accordingly, at the time of ratification or later, States could choose a method of binding dispute settlement. That approach, indeed, was a middle ground between the two earlier approaches. It was his feeling that that approach would have the support of the majority of the delegations. Taking that approach as the basis, he had proposed a text for article 33 contained in document WG/CRP.83. He would continue his consultations on that and hoped to be able to report on the subject within a few days.

22. Articles 34 to 37 dealt with final clauses. It would be recalled that the draft proposed by the International Law Commission had not had any provisions on final clauses. During the discussion in the Working Group of the Whole on a number of proposals, Ireland, on behalf of the European Union and its member States, had submitted a draft allowing for the regional economic integration organizations to become parties to the Convention. The Drafting Committee had been amenable to that proposal. The text of articles 34 to 37 as agreed by the Drafting Committee had therefore left the possibility open for such organizations to become parties to the Convention.

23. Article 34, on signature, allowed all States and regional economic integration organizations to sign the Convention. Because the term "regional economic integration organization" had not been defined in the Convention, the Drafting Committee had agreed that a definition for "regional economic integration organization" should be included in article 2 on "use of terms".

24. It would also be noted that the date for signature was left open. The Drafting Committee had agreed to follow the general practice of opening the Convention for signature for one year at United Nations Headquarters in New York. The dates would have to be completed during the adoption of the Convention in the General Assembly.

25. Article 35 was on "Ratification, acceptance, approval or accession". The Drafting Committee had decided that, instead of having two articles - one on ratification, acceptance and approval and one on accession - there should be a single article to deal with all those matters. That was the practice followed in recent treaties to simplify drafting and reduce the number of articles. Article 35 followed standard form.

26. Paragraph 1 provided that the Convention was subject to ratification, acceptance, approval or accession by States and by regional economic integration organizations. It would be open for accession from the day after the date upon which the Convention was closed for signature. The Secretary-General of the United Nations would act as the depositary for the instruments of ratification, acceptance, approval or accession.

27. Paragraph 2 addressed the relationship between a regional economic integration organization and its member States and third States. It provided that where such an organization became a party to the Convention without any of its member States being a party, the organization should be bound by all the obligations under the Convention. However, in the case of such an organization, one or more of whose member States was a party to the Convention, the organization and its member States would decide on their respective responsibilities for the performance of their obligations under the Convention. In such cases, the organization and the member States would not be entitled to exercise rights under the Convention concurrently.

28. Paragraph 3 also dealt with the particular situation of regional economic integration organizations becoming parties to the Convention. It provided that such organizations, in their instruments of ratification, acceptance, approval or accession, should declare the extent of their competence with respect to the matters governed by the Convention. Those organizations would also inform the Secretary-General of the United Nations of any substantial modification in the extent of their competence.

29. Article 36 dealt with the entry into force of the Convention. Paragraph 1 addressed two issues: the date of entry into force and the number of instruments of ratification, acceptance, approval or accession necessary for its entry into force. It was evident that the Drafting Committee had been unable to agree on the number of instruments of ratification necessary for the Convention to enter into force. Three views had been expressed. One was that the Convention should enter into force as soon as possible, which would require a

low number of instruments to be deposited. That would allow the Convention to come into force for those States that wanted to be bound by the Convention. According to that view, those States that did not wish the Convention to have binding effect on them would simply not become parties to it. According to the second view, the requirement of a large number of instruments of ratification, acceptance, approval or accession would not only ensure that many watercourse States would become parties to the Convention but also increase the likelihood that watercourse States of the same watercourse would be bound by the Convention. According to the third view, it was more realistic to take a middle ground between the two opposing views, namely, that the Convention would enjoy greater support if the required number of instruments of ratification was neither too low nor too high. It had been impossible to reconcile those views in the Drafting Committee. The number 22 represented the views of those who supported a low number of ratifications; the number 60 represented the views of those who preferred a high number; and the numbers 30 and 35 represented the views of those who preferred the middle ground.

30. With respect to the date of entry into force, the Drafting Committee had agreed on the ninetieth day following the date of deposit of the required number of instruments of ratification, acceptance, etc., with the Secretary-General of the United Nations.

31. Paragraph 2 dealt with a State or regional economic integration organization that ratified, accepted or approved the Convention or acceded thereto after the deposit of the required number of instruments of ratification, acceptance, etc. For such a State or regional economic integration organization, the Convention would enter into force on the ninetieth day following the date of deposit by such State or regional economic integration organization of its instrument of ratification, acceptance, approval or accession.

32. Paragraph 3 avoided double counting by providing that any instrument deposited by a regional economic integration organization would not be counted as additional to those deposited by Member States.

33. Article 37 dealt with authentic texts. It was the standard text in such cases and was self-explanatory.

34. The CHAIRMAN said that the statement by the Chairman of the Drafting Committee was an integral part of the report of the Drafting Committee, and it should therefore be reproduced in extenso in the summary record.

35. It was so decided.

36. The CHAIRMAN invited the Working Group to consider the first report of the Drafting Committee (A/C.6/51/NUW/WG/L.1/Rev.1) which had been submitted at the Committee's 24th meeting.

37. Mr. GONZALEZ (France) said that some of the articles to be discussed - articles 3 and 7 in particular - were related to each other, a fact that should be taken into account in the final decision.

38. The CHAIRMAN said he agreed that they were related and that a solution must be found that took into account the articles as a whole. He urged delegations to streamline the debate and avoid repetition. The discussion on article 10 would be deferred at the request of the representative of South Africa.

Part III. PLANNED MEASURES

Article 11. Information concerning planned measures

39. Mr. AMARE (Ethiopia) recalled that Ethiopia had reserved its position on all of part III (articles 11 to 19).

40. The CHAIRMAN said he took it that the Working Group wished to adopt article 11 ad referendum.

41. It was so decided.

Article 12. Notification concerning planned measures with possible adverse effects

42. The CHAIRMAN said that Turkey had reserved its position on articles 12 to 19 and had proposed that articles 12 to 15 should be changed. The positions of delegations had already been stated and could be found in summary records A/C.6/51/SR.20 and 21 for the meetings held on 14 October 1996.

43. Mr. AMARE (Ethiopia) proposed that the title of article 12 should be changed to read "Notification of planned measures which may have a significant adverse effect" in order to make it agree with the text of the article.

44. Mr. ISKIT (Turkey) said that his delegation maintained its reservation on part III as a whole. It had proposed that articles 12 to 19 should be replaced, and could not accept the adoption ad referendum of those articles.

45. Ms. FAHMI (Egypt) said that her delegation supported the title of article 12 as it appeared in the report of the Drafting Committee and would prefer to change the word "significant" in the text.

46. Mr. ROSENSTOCK (Expert Consultant) said that the best way to solve the problems posed by titles was to recognize that they were established for the sake of convenience and had no normative effect.

47. Mr. SALINAS (Chile) said that his delegation had no objections regarding the text of article 12, although the title did not match the content. Therefore, he suggested that "significant" should be inserted before "adverse effects".

48. Mr. HABIYAREMYE (Rwanda) said that the title of article 12 should agree with its text; therefore, he supported the inclusion of the adjective "significant".

49. Mr. HAMID (Pakistan) said that he supported the suggestion of the representative of Egypt that "significant" should be deleted before "adverse effect" in the text of the article.

50. Mr. DEKKER (Netherlands) said that the text should not be changed, and proposed that the phrase "with possible adverse effects" should be deleted from the title. The proposed new title would be "Notification concerning planned measures", which would be in agreement with article 11, "Information concerning planned measures", and with the text of article 13, which referred to "planned measures".

51. Ms. LADGHAM (Tunisia) said that the word "significant" should not be included in the title, and that the Netherlands proposal was worth considering.

52. Mr. LOIBL (Austria) supported the proposal of the Netherlands and other delegations that the text should not be changed and that the title should be shortened.

53. Mr. SALINAS (Chile) said that the Netherlands proposal did not agree exactly with the content of the articles. Article 11 referred to planned measures without qualifying the possible adverse effects, while article 12 stipulated the obligation to give notification of planned measures that might have a significant adverse effect. Therefore, he maintained his proposal that "significant" should be added to the title.

54. Mr. LAMMERS (Chairman of the Drafting Committee) recalled that the word "significant" appeared in two ways in the text of the Convention: in article 4, paragraph 2, where it had been agreed to leave that word, and in other articles dealing with "significant damage". He referred to the footnote on page 31. The Drafting Committee had decided not to consider that question because it was related to article 7 and would have to be revised in the light of that article.

55. Mr. RAO (India), supported by Mr. BOCALANDRO (Argentina) and Mr. LOGIZA (Bolivia), said he preferred the text recommended by the Drafting Committee and the Netherlands proposal to shorten the title.

56. Mr. KASME (Syrian Arab Republic) supported Egypt's position. The title should match the text of the article. The word "significant" was not as important in the context of notification as in the context of "significant harm". He therefore suggested using the words "possible effects" or "possible adverse effects" in the text.

57. Mr. ZHOU Jian (China) said that it would be appropriate to shorten the title of article 12, as the Netherlands had proposed. The obligation to notify was clearly expressed in the original title; if that were changed, the content would also change, and China would then have reservations.

58. Mr. HARRIS (United States of America) agreed with the comment by India, and drew attention to two other issues: firstly, he favoured retaining the words chosen by the Drafting Committee and, secondly, he made a distinction between planned measures which might have a significant adverse effect and those which actually caused a significant effect. The International Law Commission had

established a lower threshold for notification than that contained in article 7. As for the question raised by China, titles did not create normative obligations or rights; they were chosen as a matter of convenience. However, in response to the concern expressed by certain delegations, the title proposed by the Netherlands could be rephrased as "Notification concerning certain planned measures".

59. Mr. SVIRIDOV (Russian Federation) said he had no objection to retaining the title recommended by the Drafting Committee or to shortening it as proposed by the Netherlands, since the text of the article was quite self-explanatory. His delegation did not object to changing the title to "Notification concerning certain planned measures.

60. Mr. Sung-Kyu LEE (Republic of Korea) supported the position of the Netherlands.

61. The CHAIRMAN said that the word "significant" appeared throughout the text of the Convention, and the issue of the terminology of each article could not be settled until the end of the consultations currently under way, particularly on article 7. Consequently, he suggested leaving the word "significant" until work on the other articles had been finalized. As for the titles, the issue was not very important, and he asked the representative of China to clarify his statement in that regard.

62. Mr. ZHOU Jian (China) said he agreed with the proposal of the United States of America that the title should read "Notification concerning planned measures".

63. Mr. ISKIT (Turkey) drew attention to the alternative text proposed by Turkey in footnote 18 to document A/C.6/51/NUW/WG/L.1/Rev.1 and recalled that Turkey had reserved its position on articles 12 to 19.

64. The CHAIRMAN said he took it that the Working Group had noted the Turkish position, and asked the representative of Turkey to inform him of the results of his consultations with other delegations concerning his proposal.

65. Mr. KASME (Syrian Arab Republic) said that the proposal of the United States of America on the title of article 12 would cause confusion and make the text of the article inconsistent with its title.

66. Ms. LADGHAM (Tunisia) agreed with the statement by the Syrian Arab Republic.

67. Mr. CANELAS de CASTRO (Portugal) said that the United States proposal did not enjoy the consensus support which had been growing in favour of the Netherlands proposal. He wondered whether the delegation of the Netherlands itself would be prepared to accept the United States proposal; his own delegation supported the Netherlands proposal.

68. Mr. ROSENSTOCK (Expert Consultant) emphasized that the titles of articles had no normative effect.

69. Mr. NGUYEN QUY BINH (Viet Nam) said he failed to understand the reason for insisting on using the word "certain", which would limit the number of measures referred to, if the title was not an operative part of the article. He supported the Netherlands proposal.

70. Mr. PASTOR RIDRUEJO (Spain) said that Spain would be flexible as to the title of the article, and supported the Netherlands proposal.

71. Mr. PRANDLER (Hungary) said that using the word "certain" would be meaningless, and supported the proposal of the Netherlands.

72. Mr. ADAM (Sudan) said that, in light of the fact that the title of the article had no normative effect, it would be better to concentrate on adopting its contents.

73. Mr. NGUYEN QUY BINH (Viet Nam) said that, although the Netherlands proposal had not been accepted unanimously, it was supported by a broader consensus than that of the United States of America. The issue should be considered again later.

74. Mr. ZHOU Jian (China) said that the phrase which the Netherlands proposed to delete restricted the measures to those that were being referred to; the deletion of the phrase would therefore require the use of the word "certain" before the word "measures" to maintain the restrictive nature of the sentence. His delegation opposed any change to the original text.

75. The CHAIRMAN took it that the Working Group wished to postpone the adoption of the title of article 12 in order to hold consultations on the subject, and that it wished to adopt the text of that article ad referendum.

76. It was so decided.

Article 13

77. The CHAIRMAN took it that the Working Group wished to adopt the text of article 13 ad referendum.

78. It was so decided.

Article 14

79. Mr. PREDA (Romania) introduced two proposals concerning article 14. The first was to insert in subparagraph (a), after the phrase "accurate evaluation", the words "of the planned measures". The second was to delete subparagraph (b) in its entirety because, on the one hand, its content was already summarized in article 17 (3), and on the other hand, it did not appear to take into account the provisions of article 8, which had already been adopted, concerning cooperation in good faith among watercourse States, but rather cast doubt upon the good faith of those States and, in particular, that of the notifying State.

80. Mr. LAMMERS (Chairman of the Drafting Committee) said that the Drafting Committee had not deemed it necessary to make article 14 (a) any more specific,

since it had been considered that it was obviously a continuation of article 13, in which explicit reference was made to "planned measures".

81. Mr. KASME (Syrian Arab Republic) supported the statement by the Chairman of the Drafting Committee. Also, the missing conjunction should be added at the end of the Arabic text of article 14 (a) to bring it into line with the English version.

82. Mr. DEKKER (Netherlands), Mr. NGUYEN QUY BINH (Viet Nam) and Mr. HANAFY (Egypt) supported the statement by the Chairman of the Drafting Committee.

83. Mr. PREDA (Romania) said that he wished to withdraw his first proposal.

84. Mr. AMARE (Ethiopia) endorsed the second proposal of the Romanian delegation. In his view, the text of article 14, subparagraph (b), suggested that the implementation of the planned measures was left in the hands of the notified State instead of stressing cooperation and negotiation between the notifying and notified States.

85. Mr. MANONGI (United Republic of Tanzania) said that he also endorsed the second proposal of the Romanian delegation, since he felt that notified States could easily abuse the rights and privileges they were granted under article 14, subparagraph (b). Moreover, that subparagraph gave cause for concern in that there were bound to be situations in which States would have to implement measures arising from other already existing agreements covered by the draft Convention.

86. Mr. ROSENSTOCK (Expert Consultant) said that, in preparing the draft Convention, special care had been taken not to grant a veto to notified States. Article 14, subparagraph (b), was aimed at helping watercourse States to ensure that any planned measure was compatible with their obligations under draft articles 5 and 7. Furthermore, article 14, subparagraph (b), and article 17, paragraph 3, dealt with different situations and different periods of time. In that regard, the present title of article 14 had been carefully drafted to explain that its subparagraph (b) applied only to the period referred to in article 13, namely, the first six months of the period for reply.

87. Mr. NGUYEN QUY BINH (Viet Nam), Mr. KASME (Syrian Arab Republic), Mr. CANCHOLA (Mexico), Mr. HARRIS (United States of America), Mr. HANAFY (Egypt), Mr. AL-WITRI (Iraq), Mr. P. S. RAO (India), Mr. SABEL (Israel), Mr. BOCALANDRO (Argentina), Mr. SALINAS (Chile) and Mr. PULVENIS (Venezuela) expressed support for retaining the current version of article 14, subparagraph (b).

88. Ms. KALEMA (Uganda) said that, if subparagraph (b) applied only to the period of six months referred to in article 13, she was in favour of retaining it. However, should its application extend beyond that period, she would be in favour of its deletion.

89. The CHAIRMAN said he took it that the Working Group wished to adopt, ad referendum, the present version of the text of article 14 as a whole.

90. It was so decided.

Article 15

91. The CHAIRMAN said he took it that the Working Group wished to adopt the text of draft article 15 of the Convention ad referendum.

92. It was so decided.

Article 16

93. Mr. HAMID (Pakistan) said that his delegation could not accept the text of article 16, in particular its paragraph 1; the text of that paragraph was dangerous because it permitted any State to proceed with the implementation of the planned measures by invoking reasons of emergency. Moreover, that provision to some extent ran counter to article 14, subparagraph (b), and article 17, paragraph 3, which prohibited the implementation of the planned measures without the consent of the notified State.

94. Mr. ROSENSTOCK (Expert Consultant) explained that article 16, paragraph 1, was intended solely to prevent the notified State from invoking the absence of a reply to exercise a veto, which was unacceptable. In his view, that paragraph was unrelated to emergency situations and did not run counter to article 17, paragraph 3.

95. Mr. KASME (Syrian Arab Republic) said that he agreed with the text of article 16. Referring to articles 5 and 7, he said that in order to be properly understood, the concepts of "equitable participation" and "significant harm", which had not been clearly defined, would have to be defined. That was equally crucial to understanding article 6.

96. The CHAIRMAN, supported by the Chairman of the Drafting Committee, said that, in his view, when a watercourse State implemented the planned measures, it had to comply with the principles governing the present Convention, including those provided for in articles 5, 6 and 7. Furthermore, he took it that, since Pakistan had accepted the text of article 16 following the explanation of the Expert Consultant, the Working Group wished to adopt article 16 ad referendum.

97. It was so decided.

Article 17

98. Mr. AMER (Egypt), noting that he had reserved his position on article 17, paragraph 3, said that a proposal was now being made in that paragraph linking the period of suspension of the implementation of planned measures to the peaceful resolution of the dispute in question. Since that link was based on objective reality, he was now prepared to enter into negotiations on that proposal.

99. The CHAIRMAN said he took it that the Working Group wished to adopt ad referendum article 17, paragraphs 1 and 2.

100. It was so decided.

101. The CHAIRMAN, referring to article 17, paragraph 3, said that there was an alternative proposal by Portugal in square brackets. An informal survey of delegations had showed that there were more delegations against than in favour of that proposal. The paragraph was basically aimed at dealing with cases where a fact-finding commission was used; it was therefore related to article 33 concerning the settlement of disputes. Since the Chairman of the Drafting Committee was continuing his consultations on that article, he suggested deferring the adoption of any decision on that paragraph until the results of those consultations were known.

102. It was so decided.

Article 18

103. The CHAIRMAN said he took it that the Working Group wished to adopt ad referendum article 18, paragraphs 1 and 2.

104. It was so decided.

105. The CHAIRMAN, referring to article 18, paragraph 3, noted that there was a Portuguese proposal in square brackets, which had not enjoyed wide acceptance among members of the Drafting Committee. Since that paragraph also referred to the fact-finding issue, he suggested deferring the adoption of a decision until the Chairman of the Drafting Committee had concluded the consultations concerning the settlement of disputes.

106. It was so decided.

Article 19

107. The CHAIRMAN said he took it that the Working Group wished to adopt ad referendum article 19.

108. It was so decided.

Article 20

109. The CHAIRMAN, referring to article 20, said that there was a proposal by the representative of China to replace the words "preserve the ecosystems" by "maintain the ecological balance". That proposal was reflected in the summary record of the 21st meeting.

110. Mr. SVIRIDOV (Russian Federation), Mr. PASTOR RIDRUEJO (Spain), Mr. ISKIT (Turkey), Mr. CHIRANOND (Thailand), Mr. EL-MUFTI (Sudan) and Mr. AMARE (Ethiopia) said that they supported the Chinese proposal.

111. Mr. DEKKER (Netherlands) said that the Chinese proposal restricted the concept of preservation of ecosystems. According to the definition in the Convention on Biological Diversity, "ecosystem" meant a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit. The current text referred to a broader concept of protection than the mere maintenance of the ecological balance. He was therefore in favour of the original text.

112. Mr. TANZI (Italy) and Mr. PRANDLER (Hungary) said that they supported the proposal by the representative of the Netherlands.

113. Ms. LEHID (Finland) said that she supported the original text and wished to retain it for the reasons explained by the representatives of the Netherlands and Hungary.

114. Mr. RAMEOS (Malaysia), Ms. VARGAS de LOSADA (Colombia), Mr. JABER (Lebanon), Mr. PRIFTER (Switzerland) and Mr. HABIYAREMYE (Rwanda) said that they supported the Chinese proposal.

115. Mr. NGUYEN QUY BINH (Viet Nam), Mr. PATRONAS (Greece), Ms. LADGHAM (Tunisia), Mr. SALINAS (Chile) and Mr. LEE (Republic of Korea) said that they supported the current wording of article 20.

116. Ms. BARRETT (United Kingdom) said that she supported the current text for the reasons explained by the representative of the Netherlands.

117. Mr. PULVENIS (Venezuela) said that, like the representative of the United Kingdom, his delegation would prefer to retain the reference to ecosystems, as in the current text.

118. Mr. CANELAS de CASTRO (Portugal) said that he supported the original text and recalled that his delegation had referred several times to the systematic approach which had been endorsed at the United Nations Conference on Environment and Development.

119. Ms. GAO Yanping (China) said that, after an in-depth study, her delegation felt that the objective of the Convention was to make better use of international watercourses. It was not a convention on the protection of the environment, and it would therefore be better to use a more precise definition which would facilitate acceptance of the Convention by the largest possible number of States.

120. Mr. P. S. RAO (India) said that he supported the view expressed by the representative of China and suggested that the words "preserve the ecosystems" should be replaced by "maintain the ecological balance".

121. The CHAIRMAN said that the proposal to replace the words "preserve the ecosystems" by "maintain the ecological balance" had been put forward by the representative of China at the Working Group's meeting on 15 October 1996 and had been taken up by the Drafting Committee. Paragraph 2 of the commentary of the International Law Commission contained an explanation of the terminology used. He believed that there was general support for article 20 and suggested

that action on article 20 should be deferred until consultations were held on terminology.

122. Ms. GAO Yanping (China) said that the decision to defer action on article 20 was well-founded, although she did not feel that there was general agreement on the article. Most delegations had supported her delegation's proposal.

123. Mr. ROSENSTOCK (Expert Consultant) said that he was concerned that there had been no explanation of the difference between "ecosystems" and "ecological balance"; if one term was to be replaced by another, there should be a reason. If the International Law Commission preferred to use the words "preserve the ecosystems" it was because those words were the most appropriate and had been selected for that reason.

124. The CHAIRMAN, referring to the comments made by the representative of China, said that there was general agreement on the current text because it came from the Drafting Committee.

Article 21

Paragraph 1

125. The CHAIRMAN said that there were no amendments to paragraph 1.

126. Paragraph 1 was adopted.

Paragraph 2

127. The CHAIRMAN said that paragraph 2 included a note on the term "significant harm" which would be reviewed in the light of the text of article 7; the Working Group would therefore return to that paragraph after holding the relevant consultations.

128. Mr. HARRIS (United States of America) said that, judging from the commentary by the International Law Commission on article 21, paragraph 2, article 22 and article 23, the obligation established was an obligation of due diligence. In the articles themselves, however, it was not clear whether an obligation of due diligence or another type of obligation was imposed. His delegation felt that, in order to avoid ambiguities which could cause problems later, it should be made clear that the articles under consideration imposed an obligation of due diligence.

129. Mr. LAMMERS (Chairman of the Drafting Committee) said that although the Drafting Committee had not agreed to make a specific reference to that effect, the Drafting Committee had agreed that it was not an absolute obligation or an obligation of guarantee which was being imposed, but an obligation of due diligence.

130. The CHAIRMAN said that he took it that the Working Group wished to adopt article 21, paragraph 2 ad referendum on the understanding that it would revert later to the question of "significant harm".

131. It was so decided.

Paragraph 3

132. The CHAIRMAN drew attention to the two variants of article 21, paragraph 3; one referred to measures and methods in general, and the other included examples.

133. Mr. LAMMERS (Chairman of the Drafting Committee) said that the correct punctuation to reflect the two positions was as follows: the brackets should open at the beginning of the paragraph and also after the word "watercourse" in the third line; then both brackets should be closed at the end of the paragraph.

134. The CHAIRMAN, Mr. HARRIS (United States of America) and Mr. SVIRIDOV (Russian Federation) made statements about organizational matters.

The meeting rose at 1.03 p.m.